

49 CFR Part 173**[Docket No. HM-172B; Amdt. No. 173-194]****Cylinder Retester Identification Procedures****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: This final rule amends the requirements for the periodic retesting of cylinders by requiring that cylinders be marked with the cylinder retester's identification number. This action will provide the means to trace the retester of a given cylinder and thereby enhance DOT's ability to provide safety oversight of cylinder retesting. The intended effect of this action is to identify individuals who are retesting DOT cylinders. In adopting these procedures and requirements, it is necessary to revise § 173.300a to reflect that DOT approved independent inspection agencies will be eligible to perform inspections in functional areas other than the currently stated limitation to manufacturer's testing under Part 178.

EFFECTIVE DATE: January 15, 1986.

FOR FURTHER INFORMATION CONTACT: David E. Henry, Office of Hazardous Materials Transportation (OHMT), Research and Special Programs Administration, Washington, D.C. 20590, (202) 472-5892 or Marilyn Morris, (202) 426-2075.

SUPPLEMENTARY INFORMATION:**I. Background**

On October 4, 1984, RSPA published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* (49 FR 39177). The NPRM proposed certain procedures requiring a cylinder retester to mark a retested DOT cylinder with an identification number (issued by RSPA). The proposed identification number would be placed between the month and year of the retest date on each cylinder retested. The NPRM also proposed additional changes to permit an approved independent inspection agency to perform inspection functions as authorized by any provision in the Hazardous Materials Regulations (HMR) (49 CFR Parts 171-179) for which it has been qualified. This final rule contains amendments to the OHMT which are based on the proposals contained in the NPRM and the comments received in response to that NPRM. Interested persons should refer to Notice 84-12 (49 FR 39177) for detailed background information.

RSPA received 32 written comments in response to Notice 84-12, most of which came from manufacturers of fire fighting equipment. Comments were also received from two trade associations,

the Air Transport Association (ATA), and The Chlorine Institute, Inc. The majority of the respondents were supportive of the proposal.

A discussion of the significant comments and amendments adopted in this final rule follows:

Three commenters expressed their concern that cylinder logos (an identifying statement) which each of their companies have used for years to identify their own cylinders, and which are recognized in their own geographic areas, would no longer be allowed; one of the three commenters suggested that the use of a symbol or logo should be allowed as an option. RSPA disagrees. RSPA views logos, to which several companies subscribe, as only being recognizable in small geographic areas. There are situations where two or more companies located in different parts of the country are using the same logos. In the case of symbols, there is no easy way to distinguish a retester's symbol from those of cylinder owners, users, manufacturers, or inspectors. In addition, RSPA is unable to register retester's logos on its automatic data processing equipment.

The ATA, which represents carriers that contract with independent agencies for the hydrostatic retesting of cylinders, and four other commenters expressed concern that the proposed markings will require additional space on the cylinder shoulder, and more work for retesters because of the additional required markings. RSPA disagrees. During the past few years, RSPA has observed the proposed identification system in use, both domestically and internationally. A number of retesters have been marking their cylinders in the manner proposed in the NPRM, using one die containing all characters of the identification number. The one die concept has produced legible markings and the process takes less of the retester's time than the application of single character dies. RSPA has observed the one die concept for marking cylinders undergoing retest, and found that the amount of space needed for marking the retested cylinders only increased slightly.

The Chlorine Institute (CI), a trade association which represents chlorine producers and packagers engaged in packaging chlorine into cylinders, took strong exception to the proposed marking procedures. They stated that chlorine is distributed primarily by companies that, for the most part, conduct their own hydrostatic tests. The CI argued that these companies maintain meticulous cylinder retest records and maintain complete control and accountability for their own cylinders. Therefore, these members do not support the proposal on the basis that the identification requirements would serve no useful purpose. RSPA disagrees. Although the chlorine industry may be doing an excellent job of retesting and keeping track of their cylinders, there is a larger number of users that are not willing or able to be as meticulous. Furthermore, RSPA takes the position that retest records do not facilitate compliance oversight unless there is traceability from the cylinder to the records.

A few commenters raised issues which were beyond the scope of this NPRM.

In consideration of the comments received, RSPA is adopting the amendments proposed in Docket HM-172B. In this final rule, the subparagraphs appearing under § 173.34(e)(1), differ from those proposed, only to the extent that some of the wording has been changed and subparagraphs (i)-(iii) were broken up to improve clarity, which resulted in the addition of subparagraphs (v) and (iv). The text remains the same as proposed. In § 173.34, paragraph (e)(6), RSPA has provided for the authorization of cylinder markings to differ from the published requirements only upon approval by the Director for OHMT. This provision was added as the result of a commenter who pointed out that some very small cylinders might make conformance with the marking requirements impossible.

Administrative Notices

a. *Non-Major Rule.* RSPA has determined that this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant regulation under DOT's regulatory policy and procedures (44 FR 11034), and requires neither a Regulatory Impact Analysis nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

b. *Paperwork Reduction Act.* Information collection requirements contained in this regulation which

pertain to the procedures that cylinder retesters must follow have been approved by OMB under control number 2137-0022.

c. *Impact on Small Entities.* Based on limited information available concerning size and nature of entities likely to be affected, I certify that this final rule would not, if promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A regulatory evaluation is available for review in the Docket.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

In consideration of the foregoing, Part 173 is amended as follows:

1. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53 unless otherwise noted.

2. In § 173.34 the introductory text to paragraph (e), paragraphs (e)(1), (e)(6) and Note 1 in paragraph (e)(9) are revised and the OMB number is added to read as follows:

§ 173.34 Qualification, maintenance and use of cylinders.

(e) *Period retesting, reinspection and marking of cylinders.* Each cylinder that becomes due for period retest as specified in the following table and exceptions, must be retested and marked in conformance with the applicable requirements of this paragraph. * * *

(1) The periodic retest must be performed by an authorized retester and must include a visual internal and external examination in accordance with CGA Pamphlet C-6, and a test interior hydrostatic pressure in a water jacket or other apparatus suitable for determination of the expansion of the cylinder. The internal inspection may be omitted for cylinders of the type and in the service described under paragraphs (e)(9) and (10) of this section.

(i) No person may represent that he has retested a DOT specification cylinder under this section, by marking the cylinder with a test date or by any other means unless that person holds a current retester's identification number issued by the RSPA.

(ii) The marking of a test date on a DOT specification cylinder is the certification by the person affixing the

date that all applicable requirements of this section have been met with respect to that cylinder.

(iii) No cylinder required to be retested in accordance with this paragraph, or paragraphs (e)(9) or (10) of this section, may be used for the transportation of a hazardous material unless it has been retested successfully under this section, and the retester has marked the cylinder by stamping the cylinder retester identification number and date of retest plainly and permanently into the metal of the cylinder or on a metal plate which must be permanently secured to the cylinder.

(iv) RSPA may issue a retester's identification number based on an application and an inspection report of the applicant's facility and qualifications performed by an independent inspection agency approved pursuant to § 173.300a, and any other information available to RSPA. A retester's identification number in valid for five years from the date of issuance and may be renewed upon application to RSPA. Applications for renewal must be submitted at least 50 days prior to expiration of the number. An initial or renewal application may be obtained from the Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, D.C. 20590.

(v) Authority to perform retesting under this section, as reflected by assignment of a current retester identification number, remains valid as long as the level of personnel qualifications, and equipment used, is maintained at least equivalent to the level observed at the time of inspection by the independent inspection agency. * * *

(6) Each cylinder passing retest must be marked with the cylinder retester's identification number set in a square pattern, between the month and year of the retest date, in characters not less than 1/8-inch high with the first character occupying the upper left corner of the square pattern. The second character must be in the upper right, the third in the lower right, and the fourth in the lower left. Example: A cylinder retested in May, 1984, and approved by a retester who has been issued identification number A123 would be stamped:

A 1
5 3 2 84

Variations from the marking requirements may be permitted upon written request to, and approval issued by, the Director, OHMT. Stamping must be in accordance with the location requirements of the cylinder specification. Date of previous tests must not be obliterated. Cylinders which are subject to the requirements under subparagraphs (8), (9) (modified hydrostatic test only), (10), and (12) are not required to be marked with a retester's identification number.

* * *
(9) * * *

Note 1.—Cylinders requalified by the modified hydrostatic test method of external inspection shall be marked after each retest or reinspection by stamping the date of retest or reinspection on the cylinders followed by the symbol E (external inspection) or S (modified hydrostatic test method) as appropriate.

* * *
(Approved by the Office of Management and Budget under control number 2137-0022).

3. In § 173.300a, paragraph (d) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 173.300a Approval of Independent inspection agency.

* * *
(d) * * * After approval, the Director, OHMT, may authorize, upon request, the independent inspection agency to perform other inspections and functions for which the Director, OHMT, finds the applicant to be qualified. Such additional authorizations will be noted on each inspector's approval documents.

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Issued in Washington, D.C. on November 1, 1985, under authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,
Administrator, Research and Special Programs Administration.

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